IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 404 OF 2005

Ramchandra Goya Pise ....Petitioner

Versus

The State of Maharashtra & Ors. ....Respondents

Mr.K. N. Kandekar for the Petitioner.
Mr.R. D. Rane, A. G. P. for the Respondents.

CORAM : A.P. SHAH &
S.J. VAZIFDAR, JJ.
DATE : 5TH JULY, 2005.

P.C. :

1. Rule. By consent Rule is made returnable forthwith and the petition is taken up for final hearing.

2. Respondent no.2 is the Chairman of the Scheduled Tribe Certificate Scrutiny Committee. Respondent no.3 is the Executive Magistrate, Mangaon, district Raigad. Respondent no.4 is the Assistant Municipal Commissioner. Respondent no.5 is the Municipal Corporation of Greater Mumbai.

3. The Petitioner has sought to set aside an order passed by respondent no.2 dated 1st January, 2005 cancelling and confiscating a cast certificate issued by respondent no.3 dated 26th November 1982. The petitioner has also sought an order directing respondent no.2 to issue a caste validity certificate, declaring him to belong to the Scheduled Tribe of “Mahadeo Koli”.

4. The petitioner claims to belong to the Scheduled Tribe, Mahadeo Koli. He was granted a caste certificate dated 26th November 1982 to this effect by respondent no.3. On this basis, on 14th May 1994, he was appointed by respondent no.5 as a class IV employee on a post reserved for Scheduled Tribes. The petitioners contention is that respondent no.2 did not take into consideration certain crucial documents and evidence, which resulted in the passing of the impugned order confiscating the caste certificate and declaring the petitioner to belong to the caste of Koli and not to the Scheduled Tribe of Mahadeo Koli. The petitioner has referred to the Police Inspectors report furnished after a detailed home enquiry on 21st June 2004 where the vigilance officer recorded a finding to the effect that the traits, characteristics and customs partly matched those of

Mahadeo Kolis. He further relied upon the fact that the senior Deputy Superintendent of Police also agreed with the findings of the vigilance officer.

5. The second Respondent committee in the impugned order relied upon the birth record in respect of some of the relatives of the petitioner, which showed their caste as Koli and did not show them as belonging to the scheduled tribe of Mahadeo Koli. The impugned order, also referred to the affinity tests and concluded that the affinity of the petitioner's family is proved towards the Koli caste of fishermen category and not towards the scheduled tribe of Mahadeo Koli.

6. It is pertinent to note that in the impugned order it is stated that the petitioner had given some information to establish his case that he belonged to the scheduled tribe, Mahadeo Koli but observed that the same was an afterthought. It is further important to note that these documents and evidence relied upon by the petitioner was however not dealt with by the committee. The committee has given no reason whatsoever for rejecting the evidence or documents. The committee has not even specified the said evidence or documents.

7. The documents and evidence which the impugned order

failed to consider were inter- alia the school leaving certificate of the petitioners father issued in the year 1941 wherein the petitioner's father caste is mentioned as Hindu Mahadeo Koli. The petitioner also relied upon the school leaving certificate of his uncle, one Damu Balkya Pisha issued on 2nd October 1941 wherein his caste is also mentioned as Mahadeo Koli.

8. The Supreme Court in *Madhuri Patil versus Additional Commissioner, Tribal Development AIR 1995 Supreme Court, 94* held that the entries in the school register, preceding the Constitution furnish great probative value to the declaration of the status of a caste. The Supreme Court further held, that the school record is not only oldest but being the record pertaining to the candidates fathers admission to schooling prior to independence carries greatest probative and evidentiary value. The evidence in this case is similar, being of the year 1941.

9. It is thus clear that the school leaving certificate and the records in respect thereof, were the most important documents , which ought to have been considered by the committee. With a view not to waste time, instead of remanding the matter we called for the

original records to satisfy ourselves about the genuineness of the petitioners contentions. By an order dated 9th June 2005 the Government Pleader was directed to produce before this court the original school register itself in respect of the entries of the petitioner's father and his uncle. The said records were produced. We therefore considered not merely the school leaving certificate, but the original record i.e. the register maintained by the school, based on which the same was obviously issued.

10. We must mention at this stage, that none of the respondents contended that the record produced before us, was not genuine. If the genuineness of the register or the relevant entries therein were questioned by any of the respondents we may have considered remanding the matter, for in that event it would have been for the concerned authorities to determine such questions. On scrutinising the register we were also satisfied that the same is genuine and was not tampered with. We examined the entries pertaining to the petitioner's father and his uncle as well as the entries prior and subsequent thereto, to ensure that there was no interpolation, tampering or any other form of fabrication. A scrutiny of

the said records makes it clear that the petitioner's farther as well as his uncle are shown in the records as far back as 1941 as belonging to the scheduled tribe of Hindu Mahadeo Koli.

11. In the circumstances and in view of the judgement of the Hon'ble Supreme Court we are of the view that the impugned order ought to be set aside, and that the petitioner is entitled to a declaration that he belongs to the scheduled tribe of Mahadeo Koli.

12. The petition is therefore made absolute in terms of prayer (a). There shall however be no order as to costs.